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ABSTRACT

This study explores the types and extent of federal and state aid to Catholic elementary education. It examines the situation in Michigan, Missouri, and Ohio and provides case studies of Catholic elementary schools in Detroit, St. Louis, and Toledo. In Ohio, probably the most generous state with respect to nonpublic schools, the elementary school studied received about $800 per student in government aid toward its annual cost of $2,600 per pupil. The study school in Michigan, in contrast, can expect to receive a couple hundred dollars per student in federal aid, but none from the state. In Missouri, one of two states that will not serve as a middleman for distributing federal aid, a private nonprofit corporation operates a "bypass" system that provides federally funded education services to the state's parochial school system. The study also answers the question of how parochial schools get by on budgets typically one-third to one-half that of public schools. The answer is straightforward: they pay teachers $10,000 to $20,000 less than the going rate for public educators with comparable experience and credentials. Although Catholic school enrollment has increased, most of the growth is in suburban schools. Many Catholic schools in inner cities face a grim struggle to survive. An appendix contains an overview of Supreme Court jurisprudence on public aid to private schools. (SLD)

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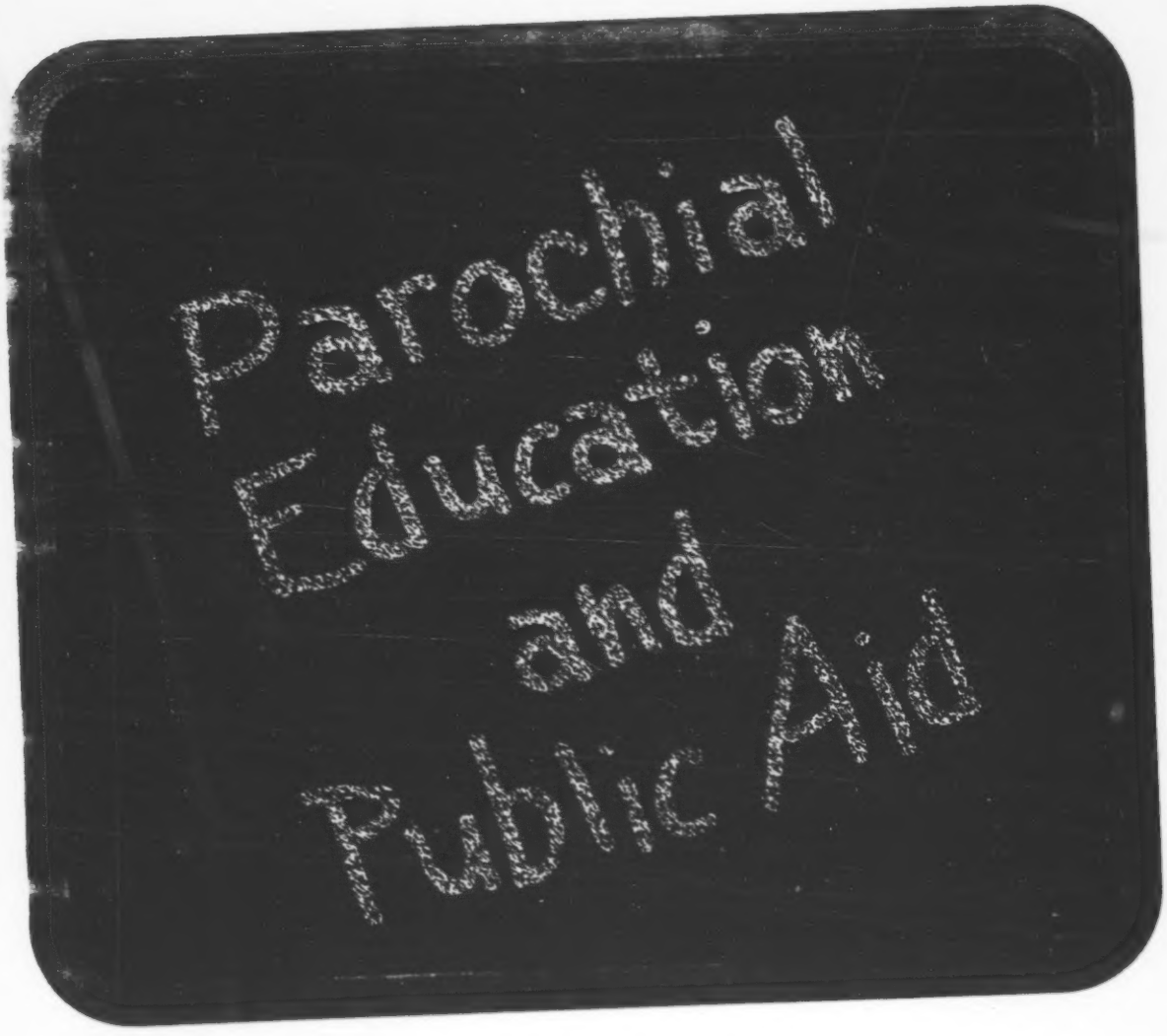

Today's Catholic Schools

by Christopher Connell

JUNE 2000

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Foreword

On June 28, as this report was going to press, the United States Supreme Court decided an important and long-awaited First Amendment case clarifying the extent to which public dollars can assist students in parochial schools. This topic has triggered epic battles in courtrooms and legislative chambers for some seventy-five years, and, with such hot issues as the constitutionality of school vouchers much with us today, the arguments show no sign of abating.

By a 6-3 margin, the Court ruled in *Mitchell v. Helms* that the First Amendment allows religious schools to use federal education dollars for computers, software, library books, and other instructional materials. In doing so, it overturned two restrictive school-aid decisions from the 1970s. Joined by three colleagues, Justice Clarence Thomas issued a sweeping plurality opinion holding that government aid that is offered to schools and students without regard to their religion and that is based on neutral, secular criteria does not have the effect of advancing religion, hence does not collide with the First Amendment's prohibition against government establishment of religion. A narrower decision by Justice Sandra Day O'Connor, joined by Justice Stephen Breyer, provided the other two votes in this intricate decision.

The *Mitchell* ruling says, in effect, that federal education aid can continue to be used to enhance the schooling of all American children, no matter what sort of school they attend, so long as the particular program is carefully designed. It also provides important clues as to how the Supreme Court may react to widely watched cases dealing with state-funded voucher programs in Ohio and Florida, cases slowly making their way toward the high court's docket. Four justices indicated they are prepared to uphold school-choice programs; two more signaled that they may also do so.

This case piqued our curiosity many months ago. When we first became aware of the issues involved in *Mitchell*, we asked: How much public aid do parochial schools and their students get *now*? We sensed that few people are clear on the nature or extent of such financial assistance today. Certainly we were not. We also sensed that the answer would vary by state—and that states are where the main action is, not Washington. So we invited Christopher Connell, a veteran education journalist (and, it turned out, a product of Catholic schooling), to look into this for us.

Connell's report is even more timely now that the Supreme Court has decided *Mitchell*, holding that—at least so far as the U.S. Constitution is concerned—parochial schools may receive public dollars for educational goods and services that do not have religious content and that benefit children rather than the schools themselves. His paper is absorbing, both as background and context for the recent decision and as revealing information in its own right. For it indeed turns out that public aid to church-related schools is widespread today. Nobody should suppose that "whether to aid" students attending parochial schools hinges on the resolution of some fractious policy decision such as enactment of a voucher or tuition tax-credit program. Dollars are flowing today. But their flow is highly variable from state to state—the product both of dissimilar state constitutional provisions and of idiosyncratic traditions and political climates. The aid takes many different forms and flows through many different channels and in exceptionally varied amounts.

Thus the policy terrain on which *Mitchell* has landed is bumpy and uneven as one moves from place to place.

Yet practically every state is home to a lively debate about public aid for youngsters attending private and parochial schools. This paper, we expect, will prove interesting to people on both sides of that debate, as well as to disinterested observers and objective analysts. Even those caught up in the policy tussle may not comprehend how many different sorts of public aid trickle into religious schools today. This report will help make that clear. Through Connell's revealing portraits of Catholic elementary schools in Michigan, Missouri, and Ohio, we hope it will also throw into sharper relief some of the exemplary contributions that religious schools make to American society by educating children and providing choices to families, especially those otherwise trapped in unacceptable urban public schools.

We do not, however, expect the policy debate to end anytime soon. It may even intensify. The expected retirement of three and perhaps four Supreme Court justices during the next presidential administration also means that the direction of the Court in these (and other) contentious cases could dramatically shift. Much is unsettled.

Amidst this debate, we register our own belief that society has an interest in educating all its children, including those who attend private and parochial schools. It is the child that should be the

state's policy concern, not the institution in which he or she happens to be enrolled. We note, too, that modest public subsidies to existing religious schools might be more economical and immediately helpful in improving the education of needy young Americans than the more grandiose (and contentious) proposals currently on the table.

Author Christopher Connell is a former Assistant Bureau Chief of the Associated Press with a quarter century of experience at the news service. He has earned a reputation as one of Washington's finest and fairest reporters through his coverage of education, health, politics, and the White House. He currently operates his own writing and consulting business and lectures widely. Readers wishing to contact him may write to CC Editorial Services, P.O. Box 7636, Falls Church, VA 22040-7636, phone (703) 698-7670, or e-mail cconnell@cceditorial.com.

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Chester E. Finn, Jr., President
Thomas B. Fordham Foundation
Washington, DC
June 2000

Executive Summary

Despite language in many state constitutions saying that taxpayers' money may be spent only on public schools, and notwithstanding the Supreme Court's tangled readings of how the Establishment Clause of the First Amendment applies to aid for parochial schools and their students, federal and state dollars reach today's religious schools in many ways, in many forms, and through many channels. This paper details the types—and extent—of such aid. The author also offers a picture of Catholic elementary education that shows both the vitality of some of these schools and the continued retrenchment of others.

Today, we find at least a modicum of government assistance making its way to most private schools, religious and nonsectarian alike. Some states lend textbooks to private school children and transport them to and from school on the same buses the public school children ride. Remedial teachers funded by the federal Title I program, who were banished to off-premise, "neutral" sites by the controversial 1985 Supreme Court ruling *Aguilar v. Felton*, are now back inside many parochial classrooms. Some of the equipment in those classrooms, from computers to cassette players, was put there at government expense—and bears stickers identifying it as government property.

In December 1999, the United States Supreme Court heard oral arguments in the case of *Mitchell v. Helms*, a case from Louisiana that will determine whether federal funds can be used by parochial schools to purchase computers, software, and library books. A decision is expected before the end of June. Although the Court's Establishment Clause jurisprudence is famously tangled, in recent years the justices have increasingly been inclined to permit public dollars to be spent on behalf of educational goods and services, so long as these benefit children rather than schools and do not themselves have religious content or advance religion.

The present case involves federal aid which, in the case of private schools, is not extensive. As an example, 11 percent of the nation's K-12 students attend private schools, but such students receive only 1 percent of federal funds for Title I "compensatory education" services.

The state picture, however, is highly varied, partly for reasons of policy and politics but largely because of the dissimilar provisions of state constitutions. Some block all outlays of tax dollars to religious institutions. Others bar any expenditure of public funds in schools not directly controlled by public authorities. Still other states permit fairly extensive aid to parochial schools.

This paper examines the situation in three states (Michigan, Missouri, and Ohio) and provides case studies of Catholic elementary schools in Detroit, St. Louis, and Toledo. In Ohio, probably the most generous state with respect to nonpublic schools, All Saints Catholic School near Toledo receives about $800 per student in government aid towards its annual cost of $2,600 per pupil. Across the border in Michigan, on the other hand, Immaculate Heart of Mary School in Detroit can expect to receive a couple hundred dollars per pupil in federal help, but not a single dollar from Lansing, due to the Michigan constitution's stringent ban on all forms of aid to nonpublic schools. In Missouri, one of two states that will not even serve as middleman for distributing federal aid, a private, nonprofit corporation operates a "bypass" system that provides federally funded education services to the state's parochial school students.

The paper also provides an answer to the question of how parochial schools get by on budgets typically one-third to one-half of public schools. The answer is straightforward: They pay teachers $10,000 to $20,000 less than the going rate for public educators with comparable experience and credentials. Although Catholic school enrollment overall has grown slightly in recent years after plunging for a generation or more, the growth is in the suburbs where new parishes are being built. Many Catholic schools in inner cities still face a grim struggle to survive, and their future, absent new sources of revenue, is not bright. These urban parochial schools, many with large numbers of minority and non-Catholic pupils, are closing their doors, even as frustrated inner-city parents are demanding alternatives to failing public schools.

Introduction

How are Catholic schools faring in an era when society is re-examining old questions about how and whether to help the six million children enrolled in nonpublic schools? I invite you to follow me on a journey to find out.

These questions have emerged in the current race for the White House, where the soon-to-be Republican nominee, George W. Bush, and his closest rival, John McCain, made the case for voucher experiments. The Texas governor wants to convert Title I compensatory aid into a limited form of voucher for parents of eligible children in failing public schools. Republicans in Congress seek to let parents accumulate tax-free interest on IRA-style savings accounts to help pay elementary, secondary, or college tuitions. A federal judge last fall struck down Ohio's experiment with $2,500 vouchers in Cleveland in a case likely to wind up before the United States Supreme Court. Several other states are experimenting with or considering vouchers, and a Florida court recently blocked that state's program offering vouchers to parents in the Sunshine State's worst schools. The Supreme Court will soon render a decision in a fifteen-year-old Louisiana case where taxpayers are contesting the legality of using federal dollars to buy computers, software, and library books for parochial school students eligible for remedial help. And last fall, in a single week, the high court let stand an Arizona program allowing $500 state tax credits for contributions to scholarship funds for private schools, but refused to hear a challenge to a Maine state-funded voucher that cannot be used at religious schools. These battles over the constitutionality of public aid to nonpublic schools have been going on for decades, and no end is in sight.

> Behind the smoke and rhetoric, federal and state aid reaches private school children every day.

Behind the smoke and rhetoric, considerable amounts of federal and state aid are furnished every day to children in private schools, from textbooks and teaching materials to anti-drug pamphlets and 10-cent cartons of milk. These students' right to share in federal education programs is spelled out in the pertinent statutes and, for the most part, is uncontested by the courts. In some states, public school buses stop at both public and private schools. Several Northeast and Midwest states, with sizable parochial school populations, provide millions of dollars in state aid directly to their private schools. New Jersey pays some families more than $700 to transport their own children to school. Ohio provides private schools with $118 million for "auxiliary services" that include nurses and counselors and furnishes another $51 million to private schools for taking attendance, giving tests, and performing other administrative chores. Similarly, New York distributes $55 million to private schools for taking attendance and giving tests. On the other hand, Missouri doesn't give a dime to private school students. Michigan pays for their transportation but virtually nothing else.

With the support of the Thomas B. Fordham Foundation, I set out to gain a better understanding of the types of aid that reach students in parochial schools, notwithstanding language in many state constitutions that says taxpayers' money may be spent only on public schools and notwithstanding the Supreme Court's tangled readings of how the Establishment Clause of the First Amendment applies to aid for parochial

schools and their students.

My larger purpose, however, is to offer a picture of Catholic education today that no mere examination of their account books or rehashing of the legal arguments can convey. But this picture, too, is neither clear nor consistent. In prosperous northern Virginia, where I live, public and parochial schools alike are experiencing a growth spurt, with trailers a common sight outside schools built in the 1950s. The parish school that one of my three children attended has two and three classes per grade, renovated classrooms, and a new $1.3 million gym likely to attract even more families.

This rosy picture near home did not prepare me for what I found in St. Louis, Detroit, and Toledo. There the era of retrenchment for Catholic schools is far from over. Many remain in deep financial straits and saddled with declining enrollments. They have raised tuition steeply and mounted aggressive efforts to attract new funds and grants, but they get by on budgets typically one-third to one-half that of public schools', primarily because of the willingness of lay teachers to accept salaries that are $10,000 to $20,000 below what the public schools pay educators with comparable experience and credentials. Most of the nuns are gone, and the convents are empty. For many lay teachers with families to support, moonlighting is a must. The schools that are in good financial shape are mostly found in suburbs, where Catholic parishes are also growing.

Though the government aid picture is truly mixed, one finds a modicum of assistance inside most private schools, religious or nonsectarian. Some states lend textbooks to private school children and transport them on the same buses the public school children ride. Remedial teachers funded by the federal Title I program, who were banished to off-premise, "neutral" sites by the controversial 1985 Supreme Court ruling *Aguilar v. Felton*, are now back inside many parochial schools, working with children a few mornings a week in pull-out classes in rooms shorn of religious symbols. The equipment in these classrooms, from computers to cassette players, bears stickers identifying it as government property. In Ohio, perhaps the most generous state in sharing its education dollars with nonpublic schools, All Saints Catholic School in Rossford, outside Toledo, counts on receiving about $800 per student in government aid towards its costs of $2,600 per pupil—more than 30 percent of the cost of attending this parochial school. Those funds pay for the school nurse, a speech therapist, a guidance counselor, and other ancillary services. But over the border in Michigan, with a stringent ban in its constitution on aid to nonpublic schools, struggling, nearly all-black Immaculate Heart of Mary School in Detroit receives barely a couple of hundred dollars per pupil in federal help and nothing at all from Lansing.

The financial situation of many central city Catholic schools is precarious, and, even as politicians scramble to offer parents more choice within public education, inner-city residents are in danger of losing the main alternative they have had for generations: the neighborhood parochial school. Although Catholic school enrollment overall has grown slightly in recent years after plunging for a generation or more, the growth is in the suburbs where new parishes are being built. Many Catholic schools in inner cities still face a grim struggle to survive, and their future, absent new sources of revenue, is not bright. Shrinking urban parishes in places like St. Louis, Detroit, and Toledo, some without a priest, can no longer subsidize their parish schools from Sunday collections. With public schools nationwide facing teacher shortages, the faculty rooms of Catholic schools will be prime recruiting grounds. In many instances, the public schools can offer these experienced and (usually) certified teachers raises of 50 percent or more.

A word on the journey to follow.

Our first stop will be at the U.S. Supreme

Court. No coherent discussion of this difficult topic can proceed without a basic understanding of the history of the First Amendment, the Court's evolving views over the last half century, and the issues that lie before the justices now, with one major parochial-aid case from Louisiana (*Mitchell v. Helms*) awaiting judgment before the current terms ends in June 2000 and the question of the constitutionality of vouchers lurking around the corner. (The appendix at the end of this report includes a more detailed review of the Court's First Amendment jurisprudence on public aid to private schools.)

Next, we visit Catholic elementary schools in Missouri, Michigan, and Ohio to get a sense of the state of parochial education today and of how federal and state aid reaches (and does not reach) the students in these schools. (I restricted my case studies to Catholic elementary schools because Catholic high schools charge higher tuition—often close to the actual cost of providing a secondary education—and generally operate on a sounder financial basis than the typical parish grade school. The National Catholic Educational Association reports that in 1998-99, the average cost per pupil at the nation's 7,000 Catholic elementary schools was $2,414, while at the 1,200 Catholic secondary schools it was $5,466.)

> Ohio and Michigan offer an illuminating contrast between two states that treat their nonpublic students very differently.

Ohio and Michigan offer an illuminating contrast as one state strives to treat nonpublic students equitably while its neighbor furnishes nothing beyond the ride to school. Missouri is one of just two states (Virginia being the other) where the state education agency contends it cannot even play the middleman in distributing federal aid to parochial schools. So Missouri has a "bypass," a special arrangement in federal law whereby the U.S. Department of Education provides funds directly from the Title I remedial education program and Title VI (an "innovative education" program) to the Blue Hills Home Corporation, which in turn sends remedial teachers out to eligible parochial schools and buys software, books, and other equipment for their students' education.

I conclude by discussing the extent and amount of state and federal aid that reaches private schools and returning for a second look at the much-anticipated *Mitchell* case and the high stakes involved as the Court tries again to draw a line between permissible and impermissible public aid to parochial schools and their pupils.

Shifting Lines in the Legal Sands

On the morning of December 1, 1999, the U.S. Supreme Court heard arguments in *Guy Mitchell et al. v. Mary L. Helms et al.*, a case from the Fifth Circuit Court of Appeals over whether federal Chapter 2 funds could be used by parochial schools in Jefferson Parish to purchase computers, software, and library books. Since 1994, the Chapter 2 program has been included in Title VI of the Elementary and Secondary Education Act (ESEA). As the law governing that program requires, nonpublic school administrators had to sign an assurance that the Chapter 2 materials purchased with federal dollars would be used only "for secular, neutral and nonideological purposes." Also, these remedial funds are supposed to supplement the regular school curriculum and not supplant items that

a school would normally purchase on its own.

Mary L. Helms, a mother in Jefferson Parish, was annoyed at how early the bus came to pick up her daughter and other public school students. The reason for the early hour was that Jefferson Parish turned its buses around to make a second run to transport parochial school students. That did not sit well with Helms and other taxpayers. Neither did the fact that the private schools were getting federal dollars to buy overhead projectors, filmstrips, and library books. They sued the U.S. Department of Education as well as local and state school agencies for furnishing aid to parochial schools, arguing that this aid violated the clause in the First Amendment that says "Congress shall make no law respecting an establishment of religion...."

The Supreme Court had made clear years earlier that states could transport parochial school students to school and purchase or loan secular textbooks to them. But as Helms and other taxpayers pressed their case, they found that Jefferson Parish had paid for 191 library books for Catholic schools with religious titles or themes, including *A Biography of the Saints*. The Chapter 2 coordinator recalled the books, which had been ordered by the schools from commercial publishers' catalogs, and donated them to the Jefferson Parish Public Library. (One of the forbidden books, *The Saints Go Marching In*, turned out to be about the local National Football League team.)

The lawsuit lingered. There were further slip-ups or near slip-ups. St. Lawrence the Martyr School ordered *A Child's Book of Prayers* in 1986. In 1992, St. Agnes School requested—but did not get—*Patrick, Saint of Ireland*; *We Celebrate Easter*; and *David and Goliath*. Another school purchased 451 reams of copier paper with $915 in Chapter 2 funds; the lawyers found that this paper was stored in a closet for common use by all teachers, including religion teachers. A district court judge ruled for the aggrieved taxpayers in 1990, saying that the Establishment Clause prohibited aid to these "pervasively sectarian" schools, but his order was stayed, and Jefferson Parish kept providing the parochial schools with their share of Chapter 2 money. Seven more years passed, the original judge retired, and a new one ruled that Jefferson Parish had sufficient controls in place "to prevent Chapter 2 benefits from being diverted to religious instruction."

Enter the Fifth Circuit Court of Appeals in New Orleans. It weighed in on what Judge John M. Duhe, Jr., called the "vast, perplexing desert of Establishment Clause jurisprudence" in 1998. Duhe noted that "the sand dunes have shifted" during the thirteen years since the suit was first filed. He and two colleagues overturned the lower court and ruled unanimously that providing computers, software, and library books to parochial schools with Chapter 2 money was unconstitutional. The appeals court said the Supreme Court had not settled this issue in 1997 in *Agostini v. Felton*, the ruling that reversed the 1985 *Aguilar v. Felton* decision and allowed Title I remedial teachers back inside parochial schools. The Fifth Circuit's decision clashed with a 1995 ruling by the Ninth Circuit in San Francisco that found nothing wrong with the public schools' loaning to religious schools computers and other instructional equipment paid for with Chapter 2 dollars. That gave the Supreme Court reason to take the case.

> The U.S. Supreme Court case of *Mitchell v. Helms* should clarify the "vast, perplexing desert of Establishment Clause jurisprudence."

When constitutional law scholar Michael W. McConnell argued *Mitchell* last December, he urged the highest court in the land not only to allow Jefferson Parish's use of Chapter 2 funds, but also to overturn two

earlier rulings: a 1975 case, *Meek v. Pittenger*, in which the Court struck down a Pennsylvania law allowing the loan of maps, charts, films, lab supplies, and other instructional materials to parochial schools; and *Wolman v. Walter* (1977), which barred Ohio from paying to transport students from religious schools on field trips. (Ohio could and still does provide pupil transportation to and from the schools themselves.) Those two decisions "have led to tremendous misunderstanding and mischief in this area," said McConnell, a professor at the University of Utah College of Law and onetime assistant solicitor general.

Justice David Souter, who wrote a ringing dissent to *Aguilar* in 1997, asked McConnell if it would be constitutional "to say we will provide all the computers and all the desks for both public and private schools." As McConnell sought to parry that question, Chief Justice William Rehnquist made an even sharper thrust. "What about a situation where the county says, 'Well, we're building a new public school and, just to be neutral, we're going to build a new parochial school, too, at our expense'?" asked Rehnquist.

McConnell was taken aback, for Rehnquist had been unsparingly critical of the Court's earlier rulings narrowing government aid to students in religious schools. The Chief Justice has argued repeatedly—often in dissent—that the Court had simply interpreted the Establishment Clause incorrectly for the past half century and turned government neutrality toward religion into hostility.

McConnell, now clearly on the defensive, allowed, "I strongly expect that the entanglement that would be entailed under such a program would be excessive." Pressed further on what aid would go over the line, McConnell remonstrated, "Your honor, the government has never simply said, 'Here is the school. It's yours.'"

"Maybe it hasn't, but the Chief Justice just did," said Souter. Before his time ran out, McConnell suggested that it would be constitutional for the government to give a computer to every school child for home use.

The nonlegal scholars among us might be tempted to ask: Is this really a case that had to go all the way to the Supreme Court? Does anyone seriously think that, if the government can furnish secular textbooks to parochial schools for remedial instruction—this was not in question—then computer programs or library books should be forbidden? In an age when computers are ubiquitous in schools and nearly so in homes, can the Court seriously be considering striking a blow for the printed word only? Wouldn't that look ridiculous?

> The Chief Justice posed the larger question at issue in *Mitchell*: Where do you draw the line?

Of course it would. The justices knew that before *Mitchell* came up, and a narrow majority will likely reverse the Fifth Circuit and possibly discard the quarter-century-old *Meek* and *Wolman* precedents as well.

But a larger question is at work here, and the Chief Justice posed it: Where do you draw the line? In *Lemon v. Kurtzman*, the 1971 case that established a three-point test to determine whether specific government aid to religious schools violated the First Amendment, Rehnquist's predecessor, Warren Burger, had ended his landmark opinion with the words, "[L]ines must be drawn." Indeed, the Court has struggled for over fifty years to draw and redraw those lines. *Mitchell* simply offers the justices their latest opportunity to do so.

But why was Rehnquist, who has sought to tear down Jefferson's (and Justice Hugo Black's) metaphoric "wall of separation between church and state," giving McConnell such a hard time? "I don't have an explanation for that," McConnell said recently. "A positive spin on the argument was that they

didn't ask me any questions about computers or computer software or anything else in Chapter 2. They were only asking questions about hypotheticals way at the other end of the spectrum. That could be because Chapter 2 is so obviously constitutional that there isn't that much to argue about and that they were only interested in what the outer limits of the position might be."

The Clinton administration sided with the parochial school parents in the Louisiana case. Barbara D. Underwood, a deputy solicitor general, told the Court that "a computer is even more neutral than a textbook. It has no content of its own." But Lee Boothby, counsel for the aggrieved taxpayers, argued that a computer "is probably the most divertible type of item that can ever be utilized within a school. You can use it for almost any purpose." When Boothby allowed that it might be constitutional to arrange for musical instruments to be provided to parochial school students, Rehnquist cracked, "What if they played *Oh, Come, All Ye Faithful* on them?"

On that jocular note, we will exit the courtroom and embark on our journey to discover what is going on inside today's Catholic schools.

Haves and Have-Nots in Michigan

Michigan is one of thirteen states that bar any use of state funds for any private schools. In this stance, it is joined by Alabama, California, Colorado, Connecticut, Delaware, Kentucky, Massachusetts, Nebraska, New Mexico, Pennsylvania, Texas, and Wyoming. Five other state constitutions (in Florida, Georgia, Montana, New York, and Oklahoma) specifically prohibit any aid, direct or indirect, to religious schools. Numerous other states have more general restrictions on public aid to private schools.

Article 8, Section 2 of the Michigan constitution explicitly prohibits voucher programs or tax benefits for students attending any private school, parochial or secular. This provision was added to the state constitution in 1970 by referendum after the Michigan Supreme Court upheld a state statute that would have permitted public funds to go to private schools for the teaching of secular subjects.

Michigan voters, however, are being asked this November whether to drop the constitutional language that bars aid to nonpublic students. The "Kids First! Yes" referendum, more importantly, would give the parents of students in Detroit, Flint, Saginaw, and several dozen other districts with low graduation rates vouchers worth at least $3,100 to send their child to the public or private school of their choice. The Michigan Catholic Conference and other supporters of the amendment collected more than 400,000 signatures, many from inner-city residents, to put this initiative onto the ballot. Michigan Governor John Engler, a Roman Catholic who has never shared some of his Republican colleagues' eagerness to experiment with vouchers, opposed the "Kids First! Yes" campaign and sought to keep it off the ballot. Engler and many Catholic politicians in Michigan are antipathetic toward furnishing more public support to parochial schools, believing that the role of state government is to support public schools, not private, parochial schools.

A $13 Million Showcase in Suburbia

All Saints School in Canton Township, a prosperous suburb twenty miles west of downtown, is the first new Catholic school built in the Detroit area in thirty years. It may represent the future of Catholic elementary

education, but it is certainly not the typical parish school of the past.

All Saints, in its third year, has already outgrown its $7.2 million modern brick quarters constructed with a loan from the Archdiocese of Detroit and will soon break ground on a $4.8 million wing with a dozen more classrooms and science laboratory. "It's a wonderful school. Unbelievable. This area will not peak until 2012, so we have a lot of years to grow," said Jacqueline Brown, the principal. "We have 363 children. Four kindergartens, three first grades and seconds, two thirds, a fourth, a fifth, and a sixth-seventh combination. We have waiting lists for the next three years of kindergarten. Our projection at full is 710, and I know we will have no difficulty meeting that."

On the same large tract of land, Resurrection Church occupies a brick, multipurpose building that houses its sanctuary and offices until a suitable church can be erected. Across the street, bulldozers and surveyors are at work on Pheasant Ridge, a development of luxury homes starting at $345,000. Three other parishes join with Resurrection Church in sponsoring All Saints. The tuition is $2,500, unchanged since the school opened in 1997. All the students are Catholic. (Brown says they would accept non-Catholics if they had space.) Ninety-five percent are white. The student-teacher ratio is 25-to-1, 20-to-1 in kindergarten. The starting salary is $24,000—several thousand dollars below the public schools, but well above other Catholic schools in the Detroit area.

And the most unusual aspect of this: All Saints charges all families a one-time registration fee of $3,500. This money goes to repay the $7.2 million borrowed from the archdiocese, and future families may be asked to pay even more when the school has the additional $4.8 million debt to pay off. The four sponsoring parishes do not subsidize the school's operation. There is no Title I program in All Saints, and no one receives a free or reduced-price lunch. Asked if any school families were poor or earning as little as $15,000 a year, Brown replied, "I don't think so. They couldn't live in this area on that kind of money."

"Why would people sacrifice to send their kids here?" Brown asked. "This is in fact a building that was begun because the parish petitioned the cardinal to build it. They knew full well when it was being built what the responsibility would be. So they in fact accepted that before they even asked the cardinal to do it. They wanted Catholic education. We are in an area that is very Catholic and very populated. We are not in an inner city. We are in a suburb of Detroit, and these people have as much right to be served as people in an inner city. I see it as a part of the same mission of the church."

> It is hard to escape the impression that All Saints' $3,500 registration fee is akin to a country club initiation fee. Is this the future for Catholic schools?

With its bright lights, colorful classrooms, full-sized gym, and other amenities, All Saints is an impressive facility, indistinguishable from a state-of-the-art public school in a similarly affluent community. But it is also hard to escape the impression that the $3,500 registration charge is akin to a country club initiation fee. Is this the future for Catholic schools? The Rev. Joseph Mallia, pastor of St. Kenneth's Church in Warren, Michigan, sees no cause for alarm and likens the fee to "a one-time gift" that other growing parishes would do well to follow.

"You'll actually be hearing more of it in the future just because the costs of building schools are so astronomical nowadays," predicted Father Mallia, who came to St. Kenneth's after the All Saints registration fee was set. "Because of the code requirements,

schools are twice as expensive as any other building. It's very difficult for individual parishes to come up with the money." Mallia said all four pastors are committed to help families for whom the registration fee or tuition is a problem. The archdiocese makes scholarships available, and Mallia's parish matches those grants for its children.

Why not simply subsidize the school from the four parishes' Sunday collections? "The problem with that," replied Mallia, "is that it becomes financially burdensome to parishes. It literally cripples their ability to minister to the larger community because a majority of their funds are directed towards the school. In many parishes, a small amount of people reap the benefits, so there's also a question of justice: How do we justify spending that large percentage of our money for very few people especially in situations where, in some schools, the Catholic population is very small?"

The $3,500 "seems like an awful lot of money," Mallia acknowledged. "But when you consider you're getting nine years of education—if you spread that over nine years—it's really not that significant. People have to be realistic about this. They think of the Catholic Church as this worldwide organization, and they think there's just a huge amount of money sitting in a pot somewhere. That's really not the case."

If you want a showcase $13 million Catholic elementary school, and decent teacher salaries, what's the harm in asking prosperous Catholic suburbanites moving into Pheasant Ridge and communities like it to pay for it themselves? As Michael McConnell suggested in response to Chief Justice Rehnquist's provocative question, the day is not at hand when taxpayers are going to build schools and turn over the keys to religious educators. That would be, in McConnell's word, excessive. The parents or the priests or the adherents of any religion who want to educate children in sectarian schools must look to build the schools themselves—and if it takes a $3,500 registration fee, so be it.

That does not mean society has no interest in, or obligation to, the education of the children who learn to read and write as well as to practice their faith in parochial schools. Yet, the question remains: Where do you draw the line?

A Struggling, Inner-City Parish School

If All Saints represents the flourishing, suburban side of Catholic education, Immaculate Heart of Mary School in a worn, three-story brick building in northwest Detroit symbolizes Catholic schools' uphill struggle to survive in the cities. More than three-quarters of its 155 students are non-Catholic. All but a handful are black. Seventy-three percent qualify for free or reduced-price lunch. It charges everyone $2,975 for tuition, and next year that will climb to $3,200. There is only a modest discount for children from the same family. The tuition is $5,700 for two and $7,500 for three. Parents get 10 percent off if they agree to participate in fundraisers, and $100 off if they refer new students who stay at Immaculate Heart for a full year. The registration fee is a modest $25. Teacher salaries start at $20,500 and peak at $26,000.

Remarkably, the school has had the same principal since 1972: Sister Stephanie Holub. When she came, the school was all white and had 400 students, down from 1,100 before the 1967 riot and white flight emptied whole neighborhoods in Detroit. "That was when there were sixty to sixty-four kids in a classroom. There would be literally desks, from wall to wall, front to back, just the bare aisle to walk up," said the principal.

"When I came, there were as many as thirty-eight in a classroom, which was entirely too many youngsters with the changes in society, I think. So we began to pare down, and now our maximum class size is twenty-four," she said. "A lot of schools, especially

suburban schools, look at this as a luxury, but there are so many things going on here, small class size is a necessity."

The school used to charge parish families less than nonparishioners, on the grounds that parish members customarily contribute regularly to the church as well, and the church in turn subsidizes the school. But that compact did not always work in practice. "We had people signing up to be members of the parish, but who did nothing by way of contributing either time, talent, or tithe," said Sister Stephanie. "So we looked at fairness to all the people who were utilizing our facility and said that people who send their children to this school have to pay what it costs, or at least everybody should be charged the same."

"We only have 120 or 125 families in the parish now. The majority are senior citizens. A couple of weeks ago I looked at the bulletin, and the contributions were less than $1,100," she said. "That's barely enough to take care of utility bills for the church building. So we had to move toward per-pupil costs for our students."

The convent was home to a dozen nuns in the early 1970s. Today there are two retired nuns who work part-time in the school, one tutoring children, the other a part-time records clerk. Sister Stephanie herself moved out of the convent three years ago into an apartment building a mile away.

Sister Stephanie's parish is in a vicariate with ten other parishes in northwest Detroit. Seven now have schools, but one is closing this spring, and another is considering shutting down and perhaps reopening as a public charter school.

The schools in northwest Detroit have formed an alliance to keep Catholic education alive in their neighborhoods. "We're hiring a project director to try to move us forward to whatever the next step is going to be: consolidation; close all six schools and start something entirely new; whatever that step is going to be," she said.

Immaculate Heart gets $80,000 from the diocese towards its budget of roughly $500,000. Most of the rest comes from tuition, and Sister Stephanie counts on bringing in $50,000 from fundraisers each year.

Several teachers moonlight to supplement their salaries. One works until 10 p.m. most weeknights at J.C. Penney. Another has a part-time job at the Michigan Institute for Nonviolence. Two attend graduate school.

"This year we had a lot of turnover in students," Sister Stephanie noted. "We have thirty-five students who are riding on the Educational Freedom Fund, which are good for $1,400 per student. Those are kids who would not be here if that scholarship were not available." Those thirty-five students were among the 3,700 who received aid from the Grand Rapids, Michigan, Educational Freedom Fund to help pay for private schooling. The fund is backed by the DeVos family, of Amway fame, and received a $7.5 million matching grant in 1998 from the Children's Scholarship Fund started by philanthropists Ted Forstmann and John Walton.

"I think at this point some of us are riding on the hope that the voucher program is going to be a reality for us."

"I think at this point some of us are riding on the hope that the voucher program is going to be a reality for us. We're riding on that hope so much that we'll do whatever we have to do to make this work for us for now," said Sister Stephanie.

"And when I say tuition for next year is $3,200, if somebody with children in our school right now says, 'Sister, I am not going to be able to afford that,' I will look at them and say, 'Well, if you paid the same amount of tuition next year as this year, will you send the children back?' I will negotiate that," she said.

Some of Immaculate Heart's pupils see a Title I teacher two days a week. "Until this year, we had a Title I teacher and an assistant every day of the week, and we had enough kids for them to service. They cut us back because our hot lunch program did not have enough students," Sister Stephanie said.

She finds parents "very reluctant to fill out the forms that ask about their finances" to determine if their child qualifies for a free lunch. This year she twisted arms. "And I said, 'You know, you need to fill this out. Your children don't need to eat the hot lunch every day, but I need you to do this because our federal monies are dependent on the numbers,'" she recalled. She wound up with seventy-three eligible and thinks that was "very close to accurate."

The school also received $600 in federal Safe and Drug Free Schools money. "We purchased materials that centered on nonviolence education and some say-no-to-drugs kinds of materials," she said. And Immaculate Heart received $2,500 in Title IV money, which it customarily uses to upgrade classroom computers and buy software. "We have our original Apple IIe's still in working order. We have moved toward MacIntoshes on which the kids all learn how to do word-processing, etc. We're moving toward the bigger and better Macs now that have the CD-ROMs and offer more interactive programs," she said.

In light of the fiscal challenges to inner-city Catholic elementary schools today, should Immaculate Heart consider going the charter route, as some others have done?

"The difference is that [parochial schools like Immaculate Heart] will have to take their crucifixes down, and they will [have to] teach any religious education after school hours. [Charter schools] cannot teach religion during the regular school day. So they will have an extended school day for anyone who wants religious education," said Sister Stephanie.

But for $6,000 per student in public funding?

"No, it's not the same, it just isn't, it's not the same," she said. "When I get kids in my office because they've been fighting—I'd like to tell you our kids are so fine they never fight, you know—but I can sit down, and no matter what the age is, at some point in the conversation or dealing with whatever the problem is, I'm going to be able to look at them and say, 'What would Jesus do in this situation?' I can't do that in the charter school. I think that is the difference between our school and Bow (a public elementary school) across the street. We have and utilize the option to teach Catholic Christian values."

Sharing the Burden in Ohio

Ohio is the most generous state in furnishing aid to students in its nonpublic schools. The state appropriates $118 million for auxiliary services and $51 million for administrative cost reimbursements for nonpublic schools out of its $6.1 billion school budget.

Generous, yes, but that also means private schools receive less than 3 percent of the state education budget while enrolling 12 percent of Ohio's students. The auxiliary services funds go to chartered nonpublic schools (most private schools are "chartered" by the state in Ohio; this has nothing to do with the public "charter schools" that have sprung up) for services such as school nurses, psychologists, guidance counselors, remediation, and special education. The funds can also be spent on textbooks, testing, computers and software, and math and science materials and equipment.

The nonpublic schools are also paid for

the administrative costs of keeping records related to state chartering, attendance, health, transportation, pupil appraisal, transfers, unemployment, and workers' compensation.

About $20 million of those state dollars go to help the 30,000 students attending the 101 Catholic schools in the diocese of Toledo, which stretches across nineteen counties in northwest Ohio. Michael Beier, a government affairs representative for the diocese, provided this breakdown for the diocese and for All Saints School in Rossford, a parochial school described below:

- Auxiliary Services: $460 per student
  Toledo Diocese: $13,339,949
  All Saints School: $111,787

- Administrative Cost Reimbursement: $221 per student
  Toledo Diocese: $6,430,235
  All Saints School: $59,365

- Professional Development Grants
  Toledo Diocese: $141,000
  All Saints: $75 per teacher

The state also appropriated $1.3 million in fiscal 1999 for repairs and replacement of mobile vans used to deliver auxiliary services to nonpublic school children, including federal Title I services.

Sixty percent of Ohio's private school students—145,418—were transported to school in 1996-97 on public school buses or other publicly funded transport. The parents of 21,234 of those students received payments for arranging the transportation themselves.

In addition, Beier offered these calculations on how much federal aid reaches students in the Toledo diocese:

- Title I remedial services: Varies from school to school, based on the number of low-income students residing in the area.

- Title II (Eisenhower Program): Funds for professional development in science, math, social studies, and language arts. Diocesan allocation: $146,770.

- Title IV (Safe and Drug Free Schools Program): For prevention of drug and alcohol abuse and school violence. Diocesan allocation: $189,000.

- Title VI (Innovative Education Program): Schools receive $4 per student.

- Title VI-B: Provides $270 for each student with an individual service plan to supplement special education.

- Federal Lunch Program: Free or reduced-price lunch for students whose families meet income guidelines.

Beier estimates that the total funding these schools receive from all these state and federal programs amounts to $800 per student.

An Urban School that Outlived Its Church

St. Mary's School in the middle of Toledo is an anomaly. It has survived for decades after the parish church was torn down in 1934. The slim spire and gilt cross atop the baroque church, built before the Civil War, had been a local landmark, but its upkeep proved too expensive during the Depression. Still, the yellow brick school endured, with its chapel doubling as the parish church. The Ursuline Sisters once taught as many as 700 children there, and Jesuit priests staffed the parish until a few years ago, when they with-

drew and a nun became the parish administrator.

St. Mary's School, having outlasted its original church, is an anomaly in other ways, too. Since 1975, it has been one of only four "continuous progress" schools in Ohio, meaning that children advance at their own pace instead of lockstep in grades. It emphasizes one-on-one and small group instruction. Its tuition structure is unusual as well. It asks families to bring in tax returns and charges them on a scale that starts at $1,125 for a student from a family earning $15,000 to a maximum of $1,925 for those making more than $39,000. Siblings are charged $450 to $725. Registration is $60 for new families, $30 for those returning.

> The total funding that Ohio schools receive from all state and federal programs is approximately $800 per student.

Sister Cheryl Darr, the principal, said the sliding tuition scale "seems a just way to meet the needs." Two-thirds of her 203 students are black, 22 percent are white, and 10 percent are Vietnamese, Hispanic, or from other ethnic groups. Two-thirds also receive free or reduced-price lunches. The maximum class size is twenty-five. School secretary Lois Szymanski's crowded desk includes bins to collect Campbell Soup labels and General Mills box tops, which can be converted into education gear.

St. Mary's is also part of the Central City Ministries of Toledo, an alliance of ten Catholic parishes and six parochial schools that have made a commitment to serve the needy of central Toledo. They are trying to raise $5 million to repair school roofs and make other improvements. Tuition—low by parochial school standards—raises about half the schools' budgets, with the ten parishes and the Central City Ministries kicking in a subsidy of more than 25 percent.

The state of Ohio also provides a significant amount of operating money. St. Mary's gets one-eighth of its budget from Columbus in reimbursement for auxiliary services. It obtains a similar fraction from grants and fundraisers. The Sisters of Charity of Montreal, the so-called "Grey Nuns" who operate St. Vincent's Mercy Medical Center, a major hospital and heart transplant center across the street from St. Mary's, donated $590,000 to buy computers for the parochial schools in the central city.

Thirty of Sister Cheryl's students this year received grants from the Children's Scholarship Fund. In addition to this private philanthropy, Ohio for several years has underwritten a voucher experiment that a federal judge ruled in December 1999 was unconstitutional because most of the pupils and money wound up going to parochial schools. This case is still being fought in the courts. But Sister Cheryl is not convinced that vouchers or even scholarships are the answer to Catholic schools' prayers.

"It's got to be more than just a money deal," she said. "I certainly believe in helping families. But are these families coming as committed people to the Catholic schools? You have to really buy into the system and the belief that we're here as a team—parents, student, teacher, administration, all of us—working together for the benefit of the child."

"We have over thirty students who got the Children's Scholarship Funds, and we've had to really work with some families to make sure they're here for service hours and participating in fundraisers, or coming for a parent conference with us. Some of them aren't used to that from public schools," she said. "And I know the Children's Scholarship people, every time we write a report, that's what they want to know: 'Is the family keeping up their end of the deal? Have they kept to what your policies were?'"

Sister Phyllis Schenk, the pastoral associ-

ate running the parish, was once at a parish that adopted a church in Haiti. "We don't have to have a mission outside Toledo. Our school is our mission," said the nun. "The diocese subsidizes us. We would not make it without that. This is the poorest [parish] in Toledo." They have just 200 parishioners on the rolls, and on a good Sunday they may collect $1,500. "This is the widow's mite," said Sister Phyllis.

St. Mary's pays its teachers $17,550 to start. One man who has taught there for a decade makes $20,305. He has a family to support but "is committed to Catholic education," said Sister Cheryl.

Will St. Mary's doors still be open in ten years? Sister Cheryl wants to return to teaching and cannot say if her order will replace her when she leaves, but she said, "I know that our schools will be around. Now financially it's going to be a burden, but it's a blessed burden."

"Our parish considers our school a real ministry," she said. "People think of preaching and going door to door to try to evangelize people. But this is a wonderful way to reach out to people, sharing the faith and our witness. I think we will be around."

> "We don't have to have a mission outside Toledo. Our school is our [parish's] mission."

Sister Diana's New School

Our next stop is another new Catholic school, this one just outside Toledo and, as it happens, bearing the same name as the school outside Detroit: All Saints. It is a result of the consolidation of two older parishes and two schools in the town of Rossford. "We came from two very old buildings in town. It was just a nightmare," said Sister Diana Lynn Eckel, the principal. The schools merged first seven years ago, and then the bishop let the parishes know that there were not enough priests to keep them both going. So they sold both schools, raised $1.7 million, purchased seventeen acres outside town, and built the new, 30,000-square-foot school for $2.8 million.

"It's like a park out here," said Sister Diana. The parish is breaking ground soon for the new church, and the school may eventually double in size. Its classrooms are spacious and open to outside play areas, and equipped with computers and high-tech tools, including a microphone-speaker system that allows a teacher to be heard by students in the back row even when her back is turned.

The tuition averages $2,300, with parishioners paying a bit less and nonparishioners a bit more. All Saints now has 285 kids, an average class size of thirty, and waiting lists for kindergarten. The lower grades—up to fourth grade—are full. This is the first new Catholic school in the diocese of Toledo in twenty years. Sister Diana was also principal at that last one, St. Joan of Arc in Toledo, when it opened with 275 students in 1980. It has 560 students today.

Michael Beier of the Toledo diocesan office said the state has eased some restrictions on how its aid may be spent. "They used to have a list of what you can't provide. Now it's a lot shorter. We expanded the definition of a textbook. Now the textbook is not just the basal reader. We also can purchase supplements to that textbook. We can purchase software to all of the curriculum. The exception is you can't purchase religious textbooks or any religious materials, software, and so on and so forth.

"We can now purchase things for the library, for instance. The overriding principle about all of this is it's for direct student use—it's the child-benefit theory, basically. But if it's benefiting the school particularly, it's going to be ruled unconstitutional," he said.

All Saints has a full-time nurse whose salary alone takes up $45,000 of the school's

auxiliary services allotment. The remedial math and reading specialist is present four days a week. She also provides enrichment. The speech therapist comes in three mornings a week.

All Saints starts its teachers at $16,000. The local public schools start at $26,000, which is about what an All Saints teacher makes after twenty-three years.

How do they attract teachers on those salaries? "Divine intervention," quipped Beier. "Pray a lot," agreed Sister Diana. "A big part is the commitment. Belief in Catholic education. While it's a sacrifice, we look at what we do not as jobs but as ministries."

Her faculty includes a couple of single parents. The teachers qualify for 40-percent tuition discounts for their own children. "We increase the salaries every year as much as we can. This year we went up $800 to $900. We will do that before we get more computers and do other things. They know when I go to that budget meeting, I am there for them," the principal said.

Beier added, "Not every teacher can afford to work in a Catholic school. Most of our teachers are not the primary wage earners. They are married and have a husband or spouse who works."

Only twenty-three of the children at All Saints get free or reduced-price lunch. A Title I instructor came on Fridays last year and worked with six students for three hours, but they did not qualify for federal help this year.

By pooling teacher development money, the diocesan office is able to provide in-service training and seminars for its teachers and pay for them to attend workshops with public school teachers. Three of the thirteen professionals in the diocesan schools office are paid with state funds. "We try to keep these folks on our salary scale," said Beier. "When you divide it, it's not a lot of money. But when you put it in a pot, you can do some nice things with that."

The most flexible federal program is Title VI, the $4-per-student innovative education program. It can be used to pay for computers, he said, but he advises principals not to use it for that lest they be tempted to use the equipment in religion classes.

All Saints also has seventeen children classified for special education, mostly for speech. "We're so small we don't have the money or the need for an LD [learning disabilities] teacher. We try to meet their needs through the remedial math and reading teacher," said Sister Diana. "If we have students we can't reach, we'll counsel them and the parents to look at another program. We had one student this year who was a nonreader in fifth grade. He needed more than pull-out. It was a justice issue. We were taking their money, and we were not able to provide what that child needed."

> "Give us the money, and we will take on the child. We would love to have handicapped children, but we can't afford them."

Sister Diana, a nun for thirty-six years and principal for seventeen, said those who think the Catholic schools discard their problem students are mistaken. "For nine years I never expelled a student. I don't take the problem children and ship them to the public school. These are the children that need us the most. That is absolutely our very last resort," she said. But she allowed that "it might be that the parents of some difficult children don't come to us."

Beier said, "It is true the kids with severe disabilities cannot be served in our buildings. We do not have the wherewithal. Give us the money, and we will take on the child. We would love to have handicapped children, but we can't afford them."

There are five other nuns at All Saints. One is eighty-five and tutors two days a week. Sister Diana said 100 of the 280 sisters in her Franciscan order "are in their eighties and nineties. We're not getting many young

people in, and we bury ten a year. When a sister leaves [All Saints], she probably won't be replaced."

A picture of two All Saints alumni who are now seminarians is prominently displayed in the front office. "We're praying for them to make it," she said.

Missouri's "Middleman" Approach

Missouri interprets the ban on state aid to nonpublic schools in its constitution so strictly that it is unwilling even to serve as the middleman for distributing federal aid. The Blue Hills Homes Corporation can thank a nineteenth-century Republican politician named James G. Blaine for this portion of its business.

Blaine was a congressman, senator, and presidential candidate from Maine who sought unsuccessfully to amend the U.S. Constitution in 1876 to bar any state aid from going to religious schools. Blaine's amendment sailed through the House (180-7) but fell two votes short of the necessary two-thirds majority in the Senate (28-16). The Plumed Knight—as Blaine was dubbed by an ally, the agnostic orator Robert G. Ingersoll, for his dogged pursuit of Republican causes—wanted the Constitution amended to read:

> No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State, for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect, nor shall any money so raised, or lands so devoted be divided between religious sects or denominations.

> Missouri interprets its constitutional ban on state aid to nonpublic schools so strictly it won't even let state officials distribute federal aid.

Blaine went on to lose the 1884 presidential race narrowly to Grover Cleveland, a Democrat, in what some historians still rate as the nastiest presidential contest in U.S. history. The victor was pilloried for fathering a child outside wedlock. Cleveland's margin was provided by a razor-thin victory in New York, where Blaine was hurt by his silence at a rally where a minister famously denounced Democrats as the party of "rum, Romanism and rebellion." Although Blaine's amendment failed in Congress, it took root in the states, where like-minded lawmakers rushed to incorporate "Baby Blaine" amendments into their own constitutions. By 1890, more than thirty states barred use of taxpayer funds by religious schools or, sometimes, any nonpublic school.

"There's two kinds of schools in Missouri: public schools and everybody else," said Dr. Raymond E. Wicks, director of curriculum and government programs for the Catholic Education Office of the Archdiocese of St. Louis. The state treats all its nonpublic schools the same, whether they have a religious affiliation or not.

The Blue Hills Home Corporation is a nonprofit organization that took its name from its original business: rehabilitating homes for low-income families in the Blue Hills section of Kansas City. It is still a general contractor and property manager, but since 1977 it also has been the Title I bypass

contractor for the state of Missouri. It operates the Title I bypass from an education office in St. Louis, where acting project director Jean Reed dispatches seventy-eight teachers to help 3,900 students eligible for remedial services in approximately 150 schools located in sixty of Missouri's 525 districts, including St. Louis-area parochial schools. They still have one classroom van in Kansas City and another in Portageville, but for the most part the Blue Hills teachers now are back inside the nonpublic schools. Most of these schools are Catholic, but they also include Lutheran schools, a Jewish school, and Christian schools.

> In Missouri, judges and state attorneys look at the state constitution and case law and say, "What does the law prohibit?" not "What does the law allow?"

Asked whether the bypass adds to the administrative costs, Reed said, "To some degree it does. You have to set up central administrative facilities. But the fact [that] the public schools cannot deliver the kind of services that we can offsets that quite strongly."

Nonpublic schools outside the bypass area serviced by Blue Hills are still entitled to Title I services through the local public schools. But the state of Missouri maintains that, notwithstanding the Supreme Court's 1997 *Agostini* decision, those districts may not send public instructors into private schools. The eligible students must go to the public school or another site for services.

"Now some [public schools] do a very good job of [providing Title I services to parochial school students] and are very concerned, and others don't do such a good job of it," said Reed. "They cannot do it during school time, so they do it after school, on Saturdays, in summer school programs, stuff like that. In some instances that works out because the public school might be right next door." But elsewhere transportation is a major problem, and with after-school programs "the attendance falls off quite a bit."

Blue Hills also holds the contract to distribute Title VI money statewide to nonpublic schools for improvements and innovations. These funds can be spent on instructional equipment, library materials, and computer software. The items are tagged with stickers that say "Title VI ESEA Property of U.S. Department of Education."

A third federal program, Title IV, the Safe and Drug Free Schools program, provides $10 per student for anti-drug and violence prevention activities. For the thirty-four Catholic elementary and secondary schools with which Wicks works, that Title IV aid amounts to $150,000.

"Missouri's language is probably no different than the language in other states' constitutions," said Wicks, a soft-spoken former associate principal of a Catholic high school. "But in Missouri, both state court decisions and [state attorneys] have interpreted it very, very strictly. Their approach is to look at the state constitution and court decisions and say, 'What does the law prohibit?' Our approach is, 'Let's look at what the law allows.'"

"The two bypasses are expensive. It's another level of bureaucracy. I'm not criticizing the people who run it; they do a very, very good job. They serve our schools very well," he said. But Blue Hills duplicates services that the state and local school districts already provide for public schools. "They have employees to be paid, and office space and telephones and printing costs and so on."

There are 500 nonpublic schools in Missouri. The Catholic schools collaborate with Lutheran schools, Hebrew schools, Seventh-day Adventist schools, and others through the state chapter of the Council for the Advancement of Private Education (CAPE). "When I deal with state officials on these issues, most of the time I represent

myself as the government representative for the CAPE organization," said Wicks, the only full-time government affairs person working for nonpublic schools in Missouri.

The Catholic schools in Missouri are so decentralized that Wicks cannot say with certainty how much they spend per pupil, what they receive in total government aid, and how much they may be missing out on. But he added, "The way this operates, it's difficult to see how we are getting our fair share."

A School that Celebrates Differences

Twelve miles west of Gateway Arch, in an area of North St. Louis County called Cool Valley, Our Lady of Guadalupe School enrolls 161 students from kindergarten through eighth grade. The school and its parish pride themselves on their ethnic diversity. Forty-eight percent of the pupils are non-Catholic. Fifty-seven percent are black, 30 percent white, 4 percent Hispanic, 7 percent multiracial, 1 percent Asian-American, and 1 percent Native American. The school hopes to lure more Hispanics by launching a bilingual program with the help of a junior college.

Principal Kathy Sedlacek said parents "are looking for a faith-filled environment—although it may not be their particular faith—and a safe environment." The school charges parishioners $2,130 in tuition, with a steep drop for additional children ($500 for the second, $120 for the third). Nonparishioners pay $2,363. The registration fee is $75 per family. Our Lady of Guadalupe draws students "from fourteen different zip codes, which is unusual for a parish school," said Sedlacek. Parents must arrange their own transportation.

Our Lady of Guadalupe once had 500 kids. The capacity is half that now because some classrooms have been converted into a library, computer room, multipurpose room (for music, art, and Spanish), a stage, and a faculty room. "The way education is these days, it requires a lot of movement in the classroom and around the building. We literally use every inch of space in the building," said the principal.

The school's motto is "One with Christ in joy, love and peace." Its stated mission is "to holistically instill the values of Jesus in each child through positive attitudes, academic growth, responsible citizenship, and an appreciation of cultural and religious differences, in cooperation with the parents/guardians as their first teachers."

The school's budget of $452,640 comes from these sources:

$267,500	tuition
82,490	parish subsidy
30,500	fees
29,500	fundraising (candy, walkathon, etc.)
24,300	diocesan subsidy for teacher salary increases
13,150	other income
5,200	gifts and endowment

The per-pupil cost is $2,811. The $24,300 from the diocese is intended to help the schools raise teacher salaries over the next three years. The starting salary at Our Lady of Guadalupe is $19,100, and the maximum is $36,000. Principals are paid 25 percent above the teacher scale.

The school provides $16,000 in direct financial aid to students, and by charging almost $700 less than the actual costs, "everybody is receiving assistance," said Sedlacek. If parents fall two months behind on tuition, "we ask the children not to come to school, but that's only happened twice in the three years I've been here," said Sedlacek. "It is the Father's policy that we not turn anyone away just because they can't afford it."

The "Father" is the Reverend Jack Shuler, the pastor for eight years. He allows that "it gets a little bit harder every year" to subsidize the school. The diocesan payment to raise teacher salaries is a big help, and, "if that is

sustained, then we will continue," he said. It is not a hard sell to convince parishioners without school-age children to support the school. "Most of their children or they themselves went through the Catholic school system. They know that they wouldn't have been able to without the support of others. So it's something they see value in. It's also a stabilizing factor for the parish," he said.

"Our name is Our Lady of Guadalupe. Our Lady of Guadalupe, in Mexico, brought diverse people together, which is kind of our mission here. So we thrive on the fact that we are multicultural. Our children in the school are of all different colors. Color is not a thing for them. They are just children," he said.

Shuler has reservations about entanglements from government aid, but adds, "Things like school books and transportation are things that all children should be entitled to."

Raised a Methodist, Sedlacek married a Catholic and converted. She also fell in love with Catholic education. "People who stay in Catholic education see this as a ministry, not just a profession. We are able to include Jesus Christ in our everyday teaching—and say that. In other schools they can do that in a roundabout way, but we don't have to tiptoe around it," she said.

> "I would hope that the government could offer us the opportunity to serve any child who is in need of remedial services."

Twenty-nine students get help from a Title I remedial instructor employed by Blue Hills, who spends three hours a day at Our Lady of Guadalupe. Bob Glynn, the Title I instructor, works with a few children at a time in a small room regularly policed for religious symbols by Glynn, by his supervisor, and twice a year by federal inspectors. "Last year was [Glynn's] first year in our building," said Sedlacek. "Prior to that [Blue Hill] had Winnebagos. The teacher would drive here, park offsite, and walk the kids to the Winnebago." Bad weather could ground the traveling classroom. "If a teacher wasn't comfortable driving the Winnebago in snow through narrow city streets, there were no Title I classes," the principal said.

Glynn can only work with students who live in the Normandy or Florissant public school districts. "We have many others who qualify, but because of where they live, we can't serve them," said the principal. The public schools in these students' home districts may offer remedial services after school, but it is often difficult for Guadalupe parents to get their kids there. Three children with learning disabilities attend an after-school special education program for nonpublic students.

Why so few? "Three reasons: transportation, paperwork, and getting families to follow through," said Sedlacek. Like her counterparts elsewhere, Sedlacek acknowledged her school does not admit "kids whose special needs are overwhelming. I don't know that we could ethically handle a child with severe learning problems."

In addition to Title I assistance, Our Lady of Guadalupe also receives $860 in federal Title VI money to buy supplementary materials for teaching anything except religion. Sedlacek let her faculty draw up wish lists. The current wish list includes a copier—the school still uses an old-fashioned mimeograph to copy work for students—a laminator, math manipulatives, bulletin boards, tape players, computers and printers, and library books. There are plenty of unmet needs. "When I got here, the maps and globes were very outdated. They are very expensive. Last year we got pull-down screens with Title VI," she said.

Sedlacek said that Title II, the Eisenhower Professional Development program, is also "a mystery program to me. It was created from

what I understand as a national program for teacher training." The school's teachers get notices of teacher-training workshops and seminars but often at the last minute, she said. "Unfortunately, I'd receive a flyer from the city on February 8 for a February 11 seminar. It always seemed to be last-minute planning. We were never included far enough in advance to make plans for teachers to attend."

A public school nurse comes every other year for health screenings. "It's great to have her, but she's spread thin among all the schools," said Sedlacek.

What would she like from the government that she does not now get?

"I would hope that the government could offer us the opportunity to serve any child who is in need of remedial services," she said. "And many of us hope that the bypass would go away. Funds are being wasted on administrative purposes because of the bypass."

The Extent of Federal and State Aid to Private Schools

No one can say with certainty how much government money winds up helping students in private schools. Neither the government nor the associations that represent nonpublic schools have been able to collect the figures. The U.S. Catholic Conference's department of education, in a 1998 report, *Making Federal Dollars Work for Catholic School Students and Staff*, took a stab at calculating the maximum that Catholic schools could receive under the main federal education programs if they got aid commensurate with their share of the state's total enrollment. But they don't. The Rev. William F. Davis, who coordinated the project, said the idea was "to convince Catholic educators that there was money out there they were eligible for."

"We don't get the money directly for all these programs," said Davis. "The money goes to the public school district, and we have to get the services from that district." If those running the program for the local public schools "don't understand the law, then we don't get everything that we're supposed to get," said Davis.

"We don't know how many schools access the federal aid that they could access. We know that it's a lot less than it should be," said Sister Dale McDonald, director of public policy and education research for the National Catholic Educational Association. "Fewer than half the diocesan offices have a government affairs person. In a lot of places, the principals are on their own. You've got a principal probably with just a secretary trying to figure all this stuff out."

Taxpayers spent more than $300 billion on U.S. public schools in 1996-97, but less than 7 percent of that money came from the federal government, according to the National Center for Education Statistics. States furnished 48 percent and localities 43 percent. The public schools also get 2 percent of their revenues from gifts, fees, and tuition. Even for special education, an area where Congress dangled the prospect that schools could recover as much as 40 percent of the extra costs when it enacted the Education for All Handicapped Children Act in 1975, Washington has never picked up more than 10 percent of the tab.

Still, the federal government provides billions of dollars in aid to schools and students each year, and this assistance has an outsized

impact in certain areas, especially remedial education for the disadvantaged, new technology, and school improvement efforts. The U.S. Department of Education tracks where the dollars in the $8 billion Title I remedial education program go and how many children are served. Federal officials say the Title I program serves over 11 million public school children (about one in four) in 45,000 schools. It serves approximately 167,000 children attending private schools (about one in thirty). The Title I money is concentrated in districts with the greatest proportions of disadvantaged children. Private schools in those districts qualify depending on how many of the children they serve are eligible for free or reduced-price lunch.

The Department of Education commissioned a study by the American Institutes of Research (AIR) to find out how funds from Title I and five other federal aid programs were spent. In addition to Title I, the programs and their total budgets for 1996-97 were:

- Title II—Eisenhower Professional Development Program ($260 million). Funds seminars, workshops, and other continuing education efforts for teachers, especially in math and science.
- Title III—Technology Literacy Challenge Fund ($200 million). These funds can be used for hardware, software, training, and wiring schools and classrooms to networks.
- Title IV—Safe and Drug Free Schools ($425 million). Provides grants for programs that teach youngsters how to avoid violence and abuse of alcohol and drugs.
- Title VI—Innovative Education Program Strategies ($310 million). Formerly the Chapter 2 block grant. Pays for supplementary educational materials, equipment and training, including library and classroom materials, audio-visual and computer hardware, and software.
- Goals 2000 Educate America Act ($476 million). Provides funds for helping states and communities with school improvement projects.

The AIR researchers surveyed 720 schools in 180 districts. Their preliminary report, released last summer, found dramatic differences in how much federal money wound up in public schools and how much went for services for students in private schools. Although 11 percent of the country's K-12 students attend private schools (5.9 million of a total 52.8 million—with 50 percent of these private school students attending Catholic schools and 35 percent attending schools of other religious background), such students receive a disproportionately low amount of federal aid.

Stephanie Stullich, an analyst working for the Undersecretary of Education and a co-author of the study, cautioned, "There is a problem with all of these figures. They may underestimate the extent to which private school students may benefit" from district spending that helps students or teachers in public and private school students alike.

Still, with 75 percent of the Title I money allocated to public schools and just 1 percent serving students in private schools, the study provides ammunition for those who believe nonpublic school students are not getting their fair share. The law only requires that public school districts provide for "equitable participation" by eligible private schools; it does not require them to allocate a proportionate share of the dollars.

Michelle Doyle, director of the Office of Nonpublic Education in the U.S. Department of Education since 1992, said federal support for nonpublic students "is not that significant. If [private schools] received everything in services that was due to them, it wouldn't make the difference between the schools staying open and not staying open. But it may mean that the [schools are] able to access the internet in 80 percent of their classrooms, as an example. That's the kind of difference that it's going to make." For percentage breakdowns showing how federal education dollars are spent, see Table 1.

Doyle hastened to add that federal aid "doesn't

Table 1: How Federal Education Dollars Are Spent (in percentages)

	Title I	Title II	Title IV	Title VI	Goals 2000
Districtwide Programs and Services	16	85	83	77	91
Individual Public Schools	75	8	7	13	6
Students in Private Schools	1	3	2	4	.1
Program Administration	8	3	8	6	4

make it or break it for the public schools, either. But it provides specialized services and benefits to either the students that need it the most or issues that need it the most."

Doyle works with two other professionals and a secretary to stand up for the interests of nonpublic students in the world of federal programs and policies. "It's difficult at times to connect to the world of private schools because it is so diverse and widespread and in many ways so decentralized," said Doyle, a former Catholic school teacher and assistant superintendent. Her shop works with "the program offices and the policymakers here to say, 'Hey, what about the 5 million kids in private schools? What does this do for them—or to them?' Or, 'How do we reach their teachers?' We're that reminder."

The task was made somewhat easier when Congress rewrote the Elementary and Secondary Education Act in 1994 by adding uniform provisions for the participation of private school students to Title XIV of the law. Now those requirements automatically apply to new school programs that Congress adds, and there is no argument over whether private school students are supposed to benefit from them. (Private schools were largely left out, however, of the initiative that President Clinton got passed to help schools hire 100,000 new teachers over seven years.)

Doyle's office publishes a handbook for public and private school educators (*Serving Private School Students with Federal Education Programs*) and a guide on how states regulate and assist private schools (*The Regulation of Private Schools in America: A State-by-State Analysis*). Doyle said the problems that crop up for private schools seeking to secure help for students usually stem from misunderstandings, not ill will.

"For the most part, people really do have good will out there. They are trying to make this work," said Doyle. "The private school people are not trying to get more than their kids are generating. They are trying to get *what* their schools are generating. That's an important distinction. The reason that there is X amount of dollars available to a public school district is because children in public and private schools have generated these dollars." Where the public and private school people share that philosophy, "programs work really well," said Doyle.

> The real struggle ahead for private school supporters will be at the state and local levels.

Yet the future will mostly be determined outside Washington. The real struggle ahead for supporters of private schools in general, and parochial schools in particular, will be at the state and local levels, where most of the money is raised and spent on elementary and secondary education. Table 2, taken from a

Table 2: Survey of State Assistance to Private Schools and Private School Students

State	Textbook Loans	Transportation	Auxiliary Services	Constitutional Prohibition on Public Aid
Alabama				yes
Alaska		yes		yes
Arizona				yes
Arkansas				yes
California		yes	yes	yes
Colorado			yes	yes
Connecticut	yes	yes	yes	yes
Delaware		yes	yes	yes
District of Columbia				
Florida			yes	yes
Georgia				yes
Hawaii				yes
Idaho		ruled unconstitutional		yes
Illinois	yes	yes	yes	yes
Indiana	yes	yes		yes
Iowa	students attending state-accredited schools only	students attending state-accredited schools only	yes	
Kansas		yes	yes	yes
Kentucky				yes
Louisiana	yes	yes	yes	
Maine	yes	permissible	yes	
Maryland			yes	
Massachusetts	no	yes	yes	yes
Michigan		permissible	yes	yes
Minnesota	yes	yes	yes	
Mississippi	yes			yes
Missouri			yes	yes
Montana		permissible		yes
Nebraska	yes	yes	yes	yes
Nevada		permissible		yes
New Hampshire	yes	yes	yes	yes
New Jersey	yes	yes	yes	
New Mexico	yes			yes
New York	yes	under certain circumstances	yes	yes
North Carolina				
North Dakota		permissible		
Ohio	yes	permissible	yes	yes
Oklahoma				yes
Oregon		yes	yes	yes
Pennsylvania	yes	yes	yes	yes
Puerto Rico				yes
Rhode Island	yes	yes		
South Carolina				yes
South Dakota				
Tennessee			yes	
Texas			yes	yes
Utah				yes
Vermont				
Virginia				yes
Virgin Islands		yes	yes	yes[1]
Washington		permissible	yes	
West Virginia	yes	yes[2]	yes	
Wisconsin		yes, with some exceptions	yes	yes
Wyoming				yes

[1] The Virgin Islands prohibits government subsidies to denominational or sectarian schools by statute.
[2] West Virginia provides transportation to private school students or payment in lieu of transportation.

Source: L. Patricia Williams, *The Regulation of Private Schools in America: A State-by-State Analysis* (U.S. Department of Education, Washington, D.C., 1998) 219-221.

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U.S. Department of Education report, *The Regulation of Private Schools in America: A State-by-State Analysis*, details the kinds of state aid that goes to private schools and their pupils in each state.

More than a century after James Blaine left the political stage, his legacy endures in numerous states that have proscribed much, if not all, state taxpayer support for children in private schools. And while great battles are fought in state capitals, the courts, and Congress over vouchers and tuition tax credits, states could extend a lifeline to struggling private schools for far less money simply by undertaking to supply all students with textbooks, software, and supplies, and by making every school eligible for a public nurse and similar forms of assistance.

And that, at long last, brings us back inside the marble corridors of the U.S. Supreme Court, where *Mitchell v. Helms* will soon be decided.

Final Argument

When Michael McConnell addressed the justices in the *Mitchell v. Helms* arguments, he said that this was a relatively easy case about "bringing programs of this sort up to date." The Court's old parochial aid cases "are mired in the technology...and the jurisprudence of the 1970s," the law professor argued. "Since that time, education has changed, and this Court's doctrines have changed." He framed it in his brief:

> Despite Congress's worthy intention to serve all school children without discrimination, the decision [of the Fifth Circuit] consigns those who attend religiously affiliated schools to the use of textbooks under the program, while children of other taxpayers are using graphing calculators to solve polynomial equations and reading about the latest in Mesopotamian archaeological discoveries on CD-ROMs.

The Court's old parochial aid cases are mired in the technology and the jurisprudence of the 1970s.

Lee Boothby, the lawyer for the Louisiana taxpayers who sued to restrict the Chapter 2 aid, is not unmindful of the plight of parochial schools. But this specialist in church-state litigation and religious discrimination cases has built his career on a passionate belief that it is "much more important to keep the government out of churches' affairs than it is to raise money."

A former general counsel for Americans United for Separation of Church and State, Boothby is the son of a Seventh-day Adventist minister. He graduated from Adventist schools, which eschew government aid, and his daughter is the principal of an Adventist school in Delaware.

If religious schools become dependent on government financing, Boothby warned, "At the very least it will require compartmentalization of the teaching of religion in a parochial school, and it may have an even greater impact than that." He added that Catholic schools could become as secular as Catholic colleges and find themselves subjected to anti-discrimination laws.

Among the cascade of amici briefs in the *Mitchell* case was one from the Interfaith Religious Liberty Foundation siding with Boothby's clients. The foundation argued that proponents of letting religious schools get computers with government funds "fail to confront the fact that in religious schools, everything that happens IS religion!" The foundation recalled an

admonition from a colonial Baptist minister, the Elder John Leland:

> The fondness of magistrates to foster Christianity has done it more harm than all the persecution ever did. Persecution is like a lion. It tears the saints to death, but it keeps Christianity pure. State established religion, though, is like a bear. It hugs the saints, but it corrupts Christianity.

This warning is a wonderful apothegm, but it is divorced from the reality of what actually goes on inside parochial schools. Their students are learning reading, writing, arithmetic, computer skills, and, if the National Assessment of Educational Progress is correct, healthy doses of civics, too. Nonpublic students outscored their public school counterparts when the National Assessment tested 22,000 school children on civics in 1998. That prompted the *Detroit News* to observe in a recent editorial:

> These findings don't necessarily show that private schools do a better job teaching civics than public schools; too many other factors may be involved. But it is perverse to argue that private schools do a worse job with civics. And it raises serious questions about the claim by public school advocates, from Horace Mann to the present, that public schools would inculcate democratic, public-spirited and universal views. Private schools, they claimed, were necessarily hampered by narrowness, sectarianism and elitism.

In spending millions of dollars to foster the establishment of public charter schools, the Clinton administration, Congress, and states have made a judgment about the importance of choice in elementary education. They recognize that competition is good for education, for their aim is not just to create new schools that work, but to spur those that parents abandon to remedy their failings and win customers back.

But if competition is good in the public sector, then isn't it in the public's interest to support competition and choice between the public and private sectors?

For me, this debate does not turn on whether the framers of the First Amendment had Thomas Jefferson's or Roger Williams's thoughts about church-state separation in mind when they wrote the First Amendment. Nor does it turn on the fact that James Blaine thought it necessary to *amend* the Constitution to prohibit states from furnishing aid to sectarian schools.

> If we preserve the Catholic schools in our inner cities, our children *and* our public schools will be the better for it.

It turns on this: Our parochial schools, like our public schools, have served this country well and made their greatest contributions in our cities. The public schools' greatest problems are in these same cities. Parents and educators are desperate for solutions. We recognize the injustice of leaving a child trapped in a failing school. That is what drives the charter movement and the voucher movement. The affluent have always enjoyed choice and always will, whether they pay tuition to a private school or steep property taxes in a suburban district.

Will we let one of the few choices that the poor and working class now have—the urban Catholic elementary school—wither away because we were afraid that helping school children would breach the mythical barrier between church and state?

It is time for the Supreme Court to look clearly at the question of aid to parochial schools and to decide that the government can freely provide aid to help educate chil-

dren without endorsing or disparaging the religion they are also taught in parochial schools.

These schools are not asking for bricks and mortar, but for books, supplies, computers, software, and other educational materials. Let us supply them generously to all children and all schools.

If we preserve the Catholic schools in our inner cities, our children *and* our public schools will be the better for it. If we let these schools keep dying, we all will be the worse.

To be sure, lines must be drawn. But not the way they were drawn in *Lemon* and *Aguilar*, or in *Meek* and *Wolman*. A society that treasures its young and wants to preserve and renew the vitality of its schools, public and private, will find the will to draw these lines more compassionately, more creatively, and more inclusively to benefit all our children.

Appendix: An Overview of Supreme Court Jurisprudence on Public Aid to Private Schools

The Supreme Court has been trying to draw the line between permissible and impermissible forms of public aid to private schools since 1947, when it upheld a New Jersey law allowing districts to transport both public and private school children (*Everson v. Board of Education of Ewing Township*).

Even before *Everson*, the Supreme Court issued a momentous ruling in 1925 that upheld the rights of parents to send their children to parochial schools and denied public schools a monopoly over the education of America's children. In *Pierce v. Society of Sisters* (1925), the high court struck down an Oregon law requiring parents to send their children to public schools. States cannot force children "to accept instruction from public teachers only," held the Court. "The child is not the mere creature of the state." And in *Cochran v. Louisiana State Board of Education* (1928), the Court upheld a Louisiana statute allowing the state to furnish textbooks to parochial school children under the theory that the books benefited the child, not the school.

But it was the *Everson* case, decided by a 5-4 majority, that laid the groundwork for the Supreme Court rulings over the next half century on government aid to students in religious schools. Although *Everson* allowed public transportation to parochial schools, it also enshrined the notion that, as Justice Hugo Black wrote, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." Black likened school bus transportation to such government services as police and fire protection, highways, sewer lines, and sidewalks. But he declared that, "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

Everson caused a stir, provoking "cries of outrage from Protestant groups, which saw it as the first step toward full public support for parochial schools," education historian Diane Ravitch recounts in *The Troubled Crusade: American Education 1945-1980* (Basic Books, New York, 1983). The National Education Association and other supporters of public education had been frustrated for years in trying to secure federal aid to elementary and secondary education. Their efforts had been stymied in part by the opposition of Catholic prelates and educators who demanded support for parochial schools on an equal footing. With *Everson*, the battle lines hardened. Catholics saw "no reason to accept legislation that gave them less than the Supreme Court approved," Ravitch writes. "On the other side, the decision inflamed anti-Catholic opinion and unleashed a torrent of attacks on Catholic motives." Protestant church leaders formed a lobby called Protestants and Other Americans United for Separation of Church and State to oppose any aid to parochial schools, and Paul Blanshard, in articles in the *Nation* magazine that later became a best-selling book, painted the Catholic Church's rituals, practices, and policies as a threat to American freedom. When former first lady Eleanor Roosevelt argued in her newspaper column against giving private

schools "tax funds of any kind," she was accused of anti-Catholicism by Cardinal Francis Spellman of New York.

A year after *Everson*, the Court ruled 8-1 in *McCollum v. Board of Education*, that a public school may not permit part-time religious instruction on its premises, even if participation is voluntary and nonpublic school personnel do the teaching. In *Zorach v. Clauson* (1952), the Court held that a similar program conducted off the public school premises passed muster. Subsequently, they have allowed modest but steadily increasing amounts of government help for students in parochial schools under the child-benefit theory. But it has been impossible to walk a straight line through this legal thicket.

In 1968, the Court upheld New York's policy of lending secular textbooks to parochial school students in *Board of Education of Central School District No. 1 v. Allen*. Then in *Lemon v. Kurtzman* (1971), the Supreme Court struck down a bold state effort to extend a lifeline to hard-pressed Catholic schools: a 1969 Rhode Island law that provided a 15-percent raise to nonpublic school teachers who taught secular subjects only. The sole beneficiaries were to be 250 teachers at Catholic schools. At the same time, the Court held that a Pennsylvania statute allowing the state to purchase "secular educational services" from nonpublic schools—in effect, paying them for teacher salaries, textbooks, and course materials—was unconstitutional. "In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support and active involvement of the sovereign in religious activity,'" said Chief Justice Burger, referencing an earlier ruling. He propounded a three-part test to weigh the constitutionality of any law providing aid to religious schools. To pass muster, such statutes must primarily have a secular purpose, neither advance nor inhibit religion, and avoid fostering excessive government entanglement with religion.

Some relationship between government and religious organizations was "inevitable," Burger acknowledged, such as "fire inspections, building and zoning regulations, and state requirements under compulsory school attendance laws." He added, "Judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship." But both the Rhode Island and Pennsylvania statutes entangled the government too much with religion, he reasoned. "This process of inculcating religious doctrine is, of course, enhanced by the impressionable age of the pupils, in primary schools particularly," he added. Burger was not blind to the financial bind that Catholic schools were facing, nor unmindful of the good they do. But he frankly admitted that he was afraid that if the Court opened the floodgates to aid parochial schools, the country would be divided along religious lines. That "was one of the principal evils against which the First Amendment was intended to protect," said Burger, who offered parochial schools this modest bouquet:

> [N]othing we have said can be construed to disparage the role of church-related elementary and secondary schools in our national life. Their contribution has been and is enormous. Nor do we ignore their economic plight in a period of rising costs and expanding need. Taxpayers generally have been spared vast sums by the maintenance of these educational institutions by religious organizations, largely by the gifts of faithful adherents.

But that was not the issue, the chief justice continued:

> The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system, the choice has been made that government is to be entirely excluded from the area of religious instruction, and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that, while some involvement and entanglement are inevitable, lines must be drawn.

Despite Burger's earnest hope that the three-part test would make these lines easier to draw, they grew ever more convoluted during the next quarter century. In *Meek* and *Wolman*, the Court barred loans of instructional materials and buses for field trips for parochial school children (although transportation to school remained constitutional). In *Committee for Public Education & Religious Liberty v. Nyquist* (1973), it struck down a New York plan to reimburse parochial schools for maintenance and repair expenses. But in *Committee for Public Education & Religious Liberty v. Regan* (1980), it allowed New York to pay nonpublic schools for keeping records and giving tests required by the state. In *Mueller v. Allen* (1983), it approved Minnesota's income tax deduction for tuition, textbooks, and transportation expenses.

Then in 1985, the Supreme Court drew two sharp lines against government programs that reached inside religious schools. In *Grand Rapids School District v. Ball*, it struck down a Michigan "shared-time" program that sent public school teachers into parochial schools for remedial or enrichment classes, and in *Aguilar v. Felton* it ruled that Title I remedial teachers could no longer go inside or even onto the grounds of parochial schools. In *Ball*, Justice William Brennan wrote that the shared-time classes advanced religion, even though they were masked as aid to individual students. The parochial students in Grand Rapids spent ten percent of their time in remedial or enrichment classes taught by public school teachers. Brennan wrote:

> To let the genie out of the bottle in this case would be to permit ever larger segments of the religious school curriculum to be turned over to the public school system, thus violating the cardinal principle that the State may not in effect become the prime supporter of the religious school system.

The *Aguilar* ruling, in its zeal to ensure that children would not interpret the presence of public teachers inside their parochial school as an endorsement of Catholic doctrine, created a logistical nightmare. The money spent on buying vans and leasing neutral sites came right off the top of Title I funds, before any aid went to students, public or private. New York City alone spent millions in this way.

Rehnquist, then an associate justice, filed a brief dissent to *Ball*, but saved his strongest language for another 1985 case, *Wallace v. Jaffree*, in which the Court threw out an Alabama law requiring a moment of silence in public schools. Dissenting there, Rehnquist offered a scholarly discourse on the drafting of the Bill of Rights by the first Congress. He complained that "Jefferson's misleading metaphor" had swayed the Court's rulings on church-state cases for nearly forty years. Far from erecting a wall between church and state, he argued, the Establishment Clause "forbade establishment of a national religion, and forbade preference among religious sects or denominations.... [It] did not require government neutrality between religion and irreligion, nor did it prohibit the Federal

Government from providing nondiscriminatory aid to religion." Rehnquist noted that on the same day in 1789 that James Madison introduced the Bill of Rights, the House took up the Northwest Ordinance, which proclaimed that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Indeed, Congress provided direct appropriations for years to establish mission schools for teaching Indians on the frontiers of the new nation. Rehnquist called the wall of separation a useless metaphor "based on bad history.... It should be frankly and explicitly abandoned." And he offered this classic litany of the contradictions from the Supreme Court's efforts to draw the line:

> [A] State may lend to parochial school children geography textbooks that contain maps of the United States, but the State may not lend maps of the United States for use in geography class. A State may lend textbooks on American colonial history, but it may not lend a film on George Washington, or a film projector to show it in history class. A State may lend classroom workbooks, but may not lend workbooks in which the parochial school children write, thus rendering them nonreusable. A State may pay for bus transportation to religious schools, but may not pay for bus transportation from the parochial school to the public zoo or natural history museum for a field trip.... A State may give cash to a parochial school to pay for the administration of state-written tests and state-ordered reporting services, but it may not provide funds for teacher-prepared tests on secular subjects. Religious instruction may not be given in public school, but the public school may release students during the day for religion classes elsewhere, and may enforce attendance at those classes with its truancy laws.

Near the end of this exegesis, Rehnquist noted:

> George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of "public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God." History must judge whether it was the Father of his Country in 1789, or a majority of the Court today, which has strayed from the meaning of the Establishment Clause.

In 1986, the Court unanimously allowed a blind student to use state rehabilitation funds for his vocational training at a Bible college to become a minister (*Witters v. Washington Department of Services for the Blind*). Rehnquist became chief justice that fall, and the pendulum slowly began swinging toward less stringent restrictions on aid to sectarian schools.

In 1993, the Court told a public school district it must keep paying for an interpreter for a deaf student who enrolled in a Catholic high school (*Zobrest v. Catalina Foothills School District*).

And in 1997, in *Agostini v. Felton*, the Court overturned all of *Aguilar* and part of *Ball*. In a 5-4 opinion written by Justice Sandra Day O'Connor, the Court restored Title I to the status it had occupied for its first twenty years, meaning the remedial classes could be held in neutral classrooms inside parochial schools. It left intact a portion of the *Ball* ruling striking down a "community

education" program in which parochial school teachers were paid to teach their pupils secular courses after regular hours.

O'Connor, who often casts the pivotal vote in contentious cases, said that a majority of the justices no longer felt that placing public school teachers "on parochial school grounds inevitably results in the impermissible effect of state sponsored indoctrination or constitutes a symbolic union between government and religion." Also, she said, a majority no longer believed "that all government aid that directly aids the educational function of religious schools is invalid." O'Connor amplified:

> There is no reason to presume that, simply because she enters a parochial school classroom, a full time public employee such as a Title I teacher will depart from her assigned duties and instructions and embark on religious indoctrination, any more than there was a reason in *Zobrest* to think an interpreter would inculcate religion by altering her translation of classroom lectures.

She added that the Court saw no perceptible difference "in the degree of symbolic union between a student receiving remedial instruction in a classroom on his sectarian school's campus and one receiving instruction in a van parked just at the school's curbside." The millions that New York City had spent on mobile vans and leased sites, O'Connor observed, could now be used for instruction "to give economically disadvantaged children a better chance at success in life by means of a program that is perfectly consistent with the Establishment Clause."

In dissent, Souter cited "the hard lesson learned over and over again in the American past and in the experiences of the countries from which we have come, that religions supported by governments are compromised just as surely as the religious freedom of dissenters is burdened when the government supports religion." He said the Court had gotten it right the first time in 1985:

> If a State may constitutionally enter the schools to teach in the manner in question, it must in constitutional principle be free to assume, or assume payment for, the entire cost of instruction provided in any ostensibly secular subject in any religious school.... In the short run there is much that is genuinely unfortunate about the administration of the scheme under *Aguilar*'s rule. But constitutional lines have to be drawn, and on one side of every one of them is an otherwise sympathetic case that provokes impatience with the Constitution and with the line. But constitutional lines are the price of constitutional government.

It was unusual for the Court explicitly to set aside two earlier and relatively fresh rulings. If Rehnquist had won converts to his side of the argument, it was by no means certain that they were as willing as he and Justice Antonin Scalia to dismantle the Court-erected wall between church schools and the state. Justice Anthony Kennedy, one of the five who voted to overturn *Aguilar*, elsewhere has stressed the importance of keeping a guard against state-sponsored religion. Writing for the majority in *Lee v. Weisman*, a 1992 case in which the Court ruled that organized prayers at public school graduations were unconstitutional, Kennedy cautioned: "The lessons of the First Amendment are as urgent in the modern world as the 18th Century when it was written."

Mitchell will provide further evidence of where the Rehnquist Court aims to redraw the line between permissible and impermissi-

ble public aid to parochial schools and should give insight into how the Court may choose to deal with state-sponsored voucher programs when such a case reaches its docket.

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